

regulated, makes a clear distinction between a *subpœna ad respondendum*, and a *subpœna ad testificandum*, by designating the first specially; and then, in the same section, allowing to the secretary a different fee for "every subpœna and return." But as the secretary was then the register in Chancery, as well as the clerk to the higher Courts of common law, it may be supposed, that these last \* mentioned kinds of subpœna were only those which issued from the Courts of common law. But the same law, **437** in a subsequent section, allows to the sheriff a fee for "serving a subpœna," without making any allusion whatever to the Court whence it may issue; it also allows to the sheriff a fee for executing a "Proclamation of Rebellion," a process known only to the Court of Chancery, whence it is sufficiently evident, that it was then considered to be the duty of the sheriff to serve subpœnas as well as to execute all other process issuing from the Court of Chancery. 1763, ch. 18.

The Acts of Assembly regulating officers' fees under the government of the Republic are, in this respect, entirely unequivocal. For, in those paragraphs in which the fees of the register in Chancery are regulated, the *subpœna ad respondendum* is, by name, set down as the first item for which he is to be allowed a fee; and then he is allowed another fee "for every subpœna and return;" which clearly shews, that those two kinds of subpœnas were issued from the Court of Chancery; and that the register was to be compensated for each. And then, in other sections, by which the sheriff's fees are regulated, it appears, that he is to be allowed a fee "for serving a subpœna and return." October, 1777, ch. 10 and 13; October, 1778, ch. 17; November, 1779, ch. 25. There is, it is true, no designation of the kind of subpœna, or of the Court whence it emanates, for which he is to be thus compensated; but then the phrase is general, and sufficiently comprehensive to embrace all kinds of subpœnas, as well as all those issuing from the Court of Chancery as from other Courts. By the same laws the sheriff is allowed a fee for executing the process of a "Proclamation of Rebellion," which, although now abrogated, 1785, ch. 72, s. 26; it is well known could then be issued only from the Court of Chancery. The late Act for regulating the fees of certain officers, 1826, ch. 247, is silent as to sheriffs' fees; and therefore, affords nothing illustrative of the question now under consideration.

From these legislative enactments it is clearly deducible, that it was then considered as the duty of the sheriff to execute subpœnas and all other process emanating from the Court of Chancery. And besides, it appears from the records of the Court itself, to have been the constant practice and usage for the sheriff to execute all *subpœnas ad respondendum*, *ad testificandum*, and *duces tecum*, which issued from it, as well as attachments. And it also appears, that on taking a party into custody, under an attachment, it had always